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8 Proposed General Counsel for
9 Debtor-in-Possession Lignus, Inc.

10 **UNITED STATES BANKRUPTCY COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 In re

13 LIGNUS, INC.,

14 Debtor.

CASE NO. 17-05475-CL11

CHAPTER 11

**FIRST DAY EMERGENCY MOTION
FOR INTERIM ORDER AUTHORIZING
PAYMENT OF INSIDER
COMPENSATION; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JOSE GAITAN**

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20 Debtor-in-Possession Lignus, Inc. ("Lignus" or "Debtor") hereby moves *ex parte* for an
21 emergency "First Day" interim Order authorizing it to pay the compensation of insiders for a
22 period not to exceed 60 days at the rates and at the times set forth hereinbelow. Before the
23 expiration of any Order authorizing their compensation pursuant to this First Day Motion, the
24 Debtor will file a Motion to be heard on regular notice as provided in the Federal Rules of
25 Bankruptcy Procedure and/or the Local Rules of the United States Bankruptcy Court for the
26 Southern District of California.

27 The Motion is and will be made pursuant to section 105 of the United States Bankruptcy
28 Code, 11 U.S.C. § 105 and Local Rule Appendix D1, and is and will be based on the

Memorandum of Points and Authorities and Declaration of Jose Gaitan set forth herein, and any papers and pleadings on file with the Court, and any other evidence that may be presented.

LAW OFFICES OF KIT J. GARDNER

Dated: 9/8/2017

By: Kit J. Gardner
Kit J. Gardner
Proposed General Bankruptcy Counsel to Debtor-
in-Possession Lignus, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

Lignus has been a successful and profitable wholesaler of lumber and related hardware accessories for approximately 13 years. In 2015, Lignus expanded and scaled-up its operations by employing more personnel and renting a warehouse space with approximately 19,000 square feet. Rent for that warehouse was \$13,500.00 per month in 2017. The increased costs of operation were not offset by significantly greater revenues, so Lignus began experiencing fiscal constraints and an inability to timely pay its creditors, primarily consisting of trade vendors supplying goods on credit.

Lignus' management has already begun measures to rescale its operations by, for example, negotiating an exit from its existing warehouse lease. Lignus intends to gradually return to its initial business model, which was based on a smaller center of operations and direct shipping of goods from its suppliers to its customers (also known as "drop shipping"), thereby reducing reliance on warehousing and staffing.

In order to obtain a reprieve from threatened creditor actions and increased pressure against it, and with the intention of repaying all of its debt in an orderly and planned fashion, Lignus has filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). In Chapter 11, Lignus intends to remain in business, continue its day-to-day normal operations (albeit on a downsized basis), and restructure its debts pursuant to a Plan of Reorganization. Lignus expects its Plan of Reorganization to propose payment in full to all creditors with allowed claims.

Lignus' central management consists of Carmen Hernandez, and her husband, Jose Gaitan. The company also employs their son as an administrator. All three are critical to the ongoing operations of the company, and will be needed in order to successfully accomplish the transition to a downsized business model and implement Lignus' reorganization plan. Lignus proposes to pay them on a post-petition basis as follows:

Name	Relationship to Debtor	Proposed Compensation	Payable
Carmen Hernandez, CEO	Officer and 35% shareholder	\$1,800/week	Weekly
Jose Gaitan, CFO	Officer and 35% shareholder	\$1,800/week	Weekly
Jose Carlos Gaitan	Administrator and 30% shareholder	\$634.48/week	Weekly

As Chief Executive Officer, Ms. Hernandez leads all the areas of the company. She has 10 years of experience in the industry and two years with the company. As Chief Financial Officer, Jose Gaitan coordinates and manages the financial affairs of the company, and its domestic and foreign export sales departments. He has more than 27 years of experience in the industry and 12 years with the company. His son, Jose Carlos Gaitan, leads the purchasing and logistics aspects of the company. He has two years of experience in the field and one year with the company.

Lignus proposes compensating each one at the rates set forth above. The wages of Carmen Hernandez have remained the same since March of 2016, and the wages of Jose Gaitan and Jose Carlos have remained the same since January of this year. Their compensation has not increased since those times. The amount proposed to be paid to Ms. Hernandez and Mr. Gaitan, combined, is approximately \$15,429.72 per month (on an annualized basis) before taxes. After taxes, the amount is approximately \$11,590.14 per month, which is necessary to pay their routine monthly living expenses, as detailed in Exhibit "A" hereto.¹

¹ Although Jose Carlos lives with Ms. Hernandez and Mr. Gaitan in the same residence, only approximately \$1,000 of his income can be counted on to be contributed to household expenses since he has a child of his own with attendant costs that are not reflected in the budget attached hereto.

1 The amounts to be paid are typical for the positions held within the industry for the size
2 of the company (in 2016, the company earned approximately \$7.5 million in revenue, and
3 approximately \$6.8 million in revenue the year before that). This year, Lignus' revenue through
4 the end of August was approximately \$5.7 million.

5 The services to be rendered by the insiders are essential to Lignus' business and
6 achieving maximum value of the business as a going concern. They have expertise and
7 intimate knowledge of Lignus' history and business operations, which are critical to the success
8 of this bankruptcy proceeding. If the Court does not approve reasonable compensation for
9 them, Lignus may be forced to retain new management who would require similar compensation
10 in any event and result in disruption to the reorganization process. Alternatively, Lignus could
11 be forced to liquidate, which would not be beneficial to creditors as compared to maintaining
12 Lignus as a going concern capable of generating revenue to pay its creditors in full.

13 At or before the expiration of any Order authorizing them to receive compensation
14 pursuant to this First Day Motion, Lignus will file a Motion to be heard with regular notice as
15 provided in the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the United
16 States Bankruptcy Court for the Southern District of California.

17 No trustee, examiner or creditor's committee has been appointed in this Chapter 11
18 case. Notice of this Motion has been given to the Office of the United States Trustee and other
19 parties in interest or their counsel, including the twenty largest unsecured creditors and the
20 secured creditor by the method indicated on the accompanying declaration of service (filed, but
21 not served).

22 WHEREFORE, the Debtor respectfully requests that it be authorized to pay
23 compensation to insiders as set forth hereinabove for a period not to exceed 60 days from the
24 petition date.

25 LAW OFFICES OF KIT J. GARDNER

26 Dated: 9/8/2017

27 By: /s/ Kit J. Gardner
Kit J. Gardner
Proposed General Bankruptcy Counsel to Debtor-
in-Possession Lignus, Inc.

DECLARATION OF JOSÉ GAITAN

I, José Gaitan, declare as follows:

1. I am over the age of eighteen, and am the Chief Financial Officer of Lignus, Inc., the Debtor-in-Possession in the above-captioned case (“Lignus” or the “Debtor”). I have personal knowledge of the facts set forth in this Declaration, except those facts stated on information and belief, which I believe to be true. If called as a witness in this matter, I could and would testify competently to the facts set forth herein.

2. Lignus has been a successful and profitable wholesaler of lumber and related accessories for approximately 13 years. In 2015, Lignus expanded and scaled-up its operations by employing more personnel and renting a warehouse space with approximately 19,000 square feet. Rent for that warehouse was \$13,500.00 per month in 2017. The increased costs of operation were not offset by significantly greater revenues, so Lignus began experiencing fiscal constraints and an inability to timely pay its creditors, primarily consisting of trade vendors supplying goods on credit.

3. Lignus’ management has already begun measures to rescale its operations by, for example, negotiating an exit from its existing warehouse lease. Lignus intends to gradually return to its initial business model, which was based on a smaller center of operations and direct shipping of goods from its suppliers to its customers (also known as “drop shipping”), thereby reducing reliance on warehousing and staffing.

4. In order to obtain a reprieve from threatened creditor actions and increased pressure against it, and with the intention of repaying all of its debt in an orderly and planned fashion, Lignus has or will file a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). In Chapter 11, Lignus intends to remain in business, continue its day-to-day normal operations (albeit on a downsized basis), and restructure its debts pursuant to a Plan of Reorganization. Lignus expects its Plan of Reorganization to propose payment in full to all creditors with allowed claims.

5. Lignus’ central management consists of my wife, Carmen Hernandez, and me. The company also employs our son as an administrator. All three of us are critical to the

ongoing operations of the company, and will be needed in order to successfully accomplish the transition to a downsized business model and implement Lignus' reorganization plan. Lignus proposes to pay us on a post-petition basis as follows:

Name	Relationship to Debtor	Proposed Compensation	Payable
Carmen Hernandez, CEO	Officer and 35% shareholder	\$1,800/week	Weekly
Jose Gaitan, CFO	Officer and 35% shareholder	\$1,800/week	Weekly
Jose Carlos Gaitan	Administrator and 30% shareholder	\$634.48/week	Weekly

6. As Chief Executive Officer, my wife Carmen leads all the areas of the company. She has 10 years of experience in the industry and two years with the company. As Chief Financial Officer, I coordinate and manage the financial affairs of the company, and its domestic and foreign export sales departments. I have more than 27 years of experience in the industry and 12 years with the company. Jose Carlos Gaitan leads the purchasing and logistics aspects of the company. He has two years of experience in the field and one year with the company.

7. Lignus proposes compensating each one of us at the rates set forth hereinabove. The wages of Carmen Hernandez have remained the same since March of 2016, and the wages of Jose Carlos and I have remained the same since January of this year. Our compensation has not increased since those times. The amount proposed to be paid to my wife and I, combined, is approximately \$15,429.72 per month (on an annualized basis) before taxes. After taxes, the amount is approximately \$11,590.14, which is necessary to pay our routine monthly living expenses, as detailed in Exhibit "A" hereto.²

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² Although Jose Carlos lives with Carmen and me in the same residence, we can only count on a portion of his earnings to be contributed to household expenses (in an amount which we estimate to be approximately \$1,000) since he has a child of his own with attendant costs that are not reflected in the budget attached hereto.

1 8. The amounts to be paid are, in my experience, typical for the positions held
2 within the industry for the size of the company (in 2016, the company earned approximately \$7.5
3 million in revenue, and approximately \$6.8 million in revenue the year before that). This year,
4 Lignus' revenue through the end of August was approximately \$5.7 million.

5 I declare under penalty of perjury that the foregoing is true and correct, and that this
6 declaration was executed on the date set forth below at San Diego, California.

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8 Dated: 9/8/2017

/s/ José Gaitan
JOSE GAITAN

EXHIBIT “A”

Monthly Expenses

Mortgage and property taxes	\$4,968.92
Home maintenance, repair & upkeep	\$150.00
HOA	\$130.00
Homeowners' insurance	\$100.00
Electricity, gas	\$500.00
Water, sewer, garbage collection	\$250.00
Telephone, cable, internet	\$280.00
Food and housekeeping supplies	\$800.00
Children's education costs (college)	\$2,400.00
Clothing, laundry and dry cleaning	\$380.00
Personal care products & services	\$200.00
Housekeeping & cleaning	\$548.00
Medical and dental	\$500.00
Transportation	\$350.00
Entertainment, newspapers, etc	\$400.00
Life insurance	\$196.00
Vehicle insurance	\$95.00
Car payments	\$2,098.18 **
 TOTAL EXPENSES	 \$14,346.10
 TOTAL INCOME	 \$12,590.14
 Monthly Net	 -\$1,755.96

**Luxury vehicle lease payments. Insiders are working to return them and replace with two vehicles with est. monthly combined payments of \$600